

COUNCIL AGENDA: 6-17-14
ITEM: 2.58

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Toni J. Taber, CMC
City Clerk

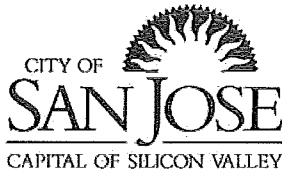
SUBJECT: SEE BELOW

DATE: 6-12-2014

SUBJECT: AB 1147 (BONILLA, GOMEZ, HOLDEN): MASSAGE THERAPY

RECOMMENDATION

As referred by the Rules and Open Government Committee on June 11, 2014 and outlined in the attached memo previously submitted by the Rules and Open Government Committee, adopt a position in support for AB 1147 (Bonilla et al) Massage Therapy.



Memorandum

TO: RULES AND OPEN
GOVERNMENT COMMITTEE

FROM: Larry Esquivel

SUBJECT: SEE BELOW

DATE: June 5, 2014

Approved

Date

6/6/14

SUBJECT: AB 1147 (BONILLA, GOMEZ, HOLDEN): MASSAGE THERAPY

RECOMMENDATION:

1. Adopt a position in support for AB 1147 (Bonilla et al) Massage Therapy; and
2. Recommend a one-week turnaround to the City Council so that the City's Legislative Representative can advocate the City's support for AB 1147.

BACKGROUND

With the passage of SB 731 in 2008, the California State Legislature created the California Massage Therapy Council (CAMTC) in an effort to provide voluntary certification for massage therapists and massage therapy business owners. The CAMTC is a non-profit, public benefit corporation whose mission statement espouses the protection of the public by certifying and permitting qualified massage professionals in California.

With the creation of the CAMTC, the immediate effect on state law enforcement agencies was the discontinuation of the practice of local permitting for massage therapists. In San José, after the creation of the CAMTC, the result was a proliferation of both regulated and unregulated massage parlors, a significant increase in citizen complaints specific to prostitution-related activities associated with these massage parlors and a diminished capacity in our department's ability to conduct administrative inspections on CAMTC certified businesses.

AB 1147 was introduced to fix the unintended consequences of SB 731 dealing with the voluntary certification of massage professionals. The League of California Cities writes, "it is clear now that the law is not working and needs to be changed."

RULES AND OPEN GOVERNMENT COMMITTEE

June 5, 2014

Subject: AB 1147 (Bonilla, Gomez, Holden): Massage Therapy

Page 2

Existing law, until January 1, 2015:

- Provides for the voluntary certification of massage practitioners and massage therapists by the California Massage Therapy Council.
- Specifies the requirements for the council to issue to an applicant a certificate as a massage practitioner or massage therapist.
- Authorizes a city, county, or city and county to impose certain requirements on massage establishments or businesses that are the sole proprietorship of an individual certified pursuant to existing state law or that employ or use only persons who are so certified.
- Authorizes a city, county, or city and county to, among other things, adopt reasonable health and safety requirements, as specified, pertaining to those massage establishments or businesses, and to require an applicant for a business license to operate a massage business or establishment to fill out an application that requests relevant information, as specified.

If enacted, AB 1147 would:

- Reenact, revise, and recast these provisions to, among other things, additionally provide for the registration of massage establishments and the certification of massage establishment operators, as specified.
- Discontinue the issuance of new massage practitioner certificates after January 1, 2015, except as provided, but would authorize the renewal of massage practitioner certificates issued prior to January 1, 2015.
- Require that all certificates or registrations issued pursuant to these provisions be subject to renewal every 2 years, except as provided.
- Reconstitute CAMTC's board, adding public members as well as a position for a police chief.
- Explicitly authorize local governments to adopt ordinances to require massage establishments to comply with reasonable health and safety requirements and abide by hours of operation, as well as authorize inspections of massage establishments to ensure compliance with State law and any local ordinance.
- Remove broad restrictions on local government's land use authority so that cities and counties could more effectively zone and regulate massage establishments.

- Require the Board of Directors of the council to adopt requirements for the continuing education of certificate holders, as specified, and would require the council to inspect and approve schools or continuing education providers.

ANALYSIS

The CAMTC's legislative mandate is due to sunset effective January 1, 2015. If the sunset clause takes effect, cities would be given back the authority to regulate massage therapy businesses. In San José, this means the Police department would once again have the authority, through the San José Municipal Code, to permit massage establishments and actively enforce local operating regulations, including health and safety regulations. Although regaining control over massage therapist/business permitting could potentially lead to more effective regulation/enforcement of these businesses, it would also create an increased burden on the department's Permits Unit. Further investigation would be necessary to determine the capacity of the Permits Unit to undertake this on-going permitting process; it is estimated that 200 - 300 persons would require permits on either an annual or bi-annual basis, if CAMTC's legislative mandate sunsets.

Every business turned over to the CAMTC by the San José Police Department continues to remain an open case with the CAMTC. Of main concern with respect to these businesses is their close proximity to schools, parks and other publically accessible locations. Amongst others, complainants regarding these nuisances businesses include private citizens, neighborhood groups and both business-based and faith-based organizations. To compound the problem, many of the venues in question employ masseuses that were certified by the CAMTC, which limits the scope of the department's administrative enforcement capabilities.

Due to resource and staffing issues, in 2011 the department was forced to make drastic personnel-related moves to ensure the proper numbers of resources were allocated to Patrol and other essential departmental functions. As a result, all sworn members assigned to the Vice Unit (enforcement team) were shifted over the newly created Covert Response Unit (CRU); CRU's main function is to locate, track and apprehend violent criminal offenders. Over time, those assigned to CRU to enforce Vice-related crimes were overwhelmed with fulfilling CRU-related functions; consequently, enforcement of criminal vice-related crimes was virtually eliminated. AB1147 would not bring back local control of the regulation of massage establishments; primary regulation would still be with CAMTC. However, CAMTC's Board would be reconstituted to include public members as well as a police chief member. The department sees AB1147 as a potential vehicle to incorporate changes that would provide the department with the much needed tools to be able to address the proliferation of illicit massage establishments. The City could adopt an ordinance to require massage establishments, including those registered with the State, to comply with reasonable health and safety requirements and abide by hours of operation, as well as authorize inspections of massage establishments to ensure compliance with State law and the City's regulations. AB1147 would also enable applicable zoning ordinances to be resurrected to maintain the vision of city planners. Under current command and supervision, the

RULES AND OPEN GOVERNMENT COMMITTEE

June 5, 2014

Subject: AB 1147 (Bonilla, Gomez, Holden): Massage Therapy

Page 4

Vice Administrative Unit has enjoyed a very collegial relationship with the City Attorney's Office, Code Enforcement, Planning and other key city departments (all necessary components to achieving a collaborative, all-inclusive approach to effective enforcement and regulation of massage therapy businesses).

Should AB 1147 pass the legislature by the August 31 end of session deadline, the Governor will then have until September 30 to either sign the bill into law or veto it. If the CAMTC is concluded, the department would have a short timeframe, from September 2014 to January 2015, to prepare and plan for the necessary permitting changes.

SUMMARY AND STATUS

It is the department's opinion that having the ability, as a police department, to administratively inspect and regulate massage therapy businesses is in the best interest of the citizens of San José. The department recommends the creation of a committee consisting of members of the Vice Administrative Unit and Permits Unit to assess the feasibility of whether or not the Permits Unit has the infrastructure to maintain this function.

AB 1147 is supported by the League of California Cities, the California Police Chiefs Association, and the cities of Alhambra, Burbank, Long Beach, Marino, Moorpark, Rancho Cucamonga and Torrance. AB 1147 passed the Assembly 68-1 with 11 not voting, and is currently scheduled to be heard in the Senate Business, Professions and Economic Development Committee on June 23.

EVALUATION AND FOLLOW-UP

The City Council will be informed as to the status of this measure as part of the regular Intergovernmental Relations legislative updates.

COORDINATION

This memorandum was coordinated the City Manager's Office of Intergovernmental Relations, the City's Legislative Representative in Sacramento, Planning and Building Code Enforcement and the City Attorney's Office.

POLICY ALIGNMENT

From the 2014 Legislative Guiding Principles adopted by the City Council on January 14, 2014: "Support efforts to keep San José safe." The passage of AB 1147 would allow for the Police Department to once again have authority through the San José Municipal Code to conduct

RULES AND OPEN GOVERNMENT COMMITTEE

June 5, 2014

Subject: AB 1147 (Bonilla, Gomez, Holden): Massage Therapy

Page 5

thorough administrative inspections of massage parlors, ensure appropriate follow-up on irresponsible operators and ensure reasonable sanction are sought for business and land owners.

/s/

LARRY ESQUIVEL

Chief of Police

For more information contact Sergeant Todd Trayer at 408-277-4322.